

AIA[®] Document B105[™] – 2017

Standard Short Form of Agreement Between Owner and Architect

AGREEMENT made as of the day of in the year
(In words, indicate day, month and ~~year~~ year.) (October 2018 Revision, Revised October 2021, November 2021)

BETWEEN the Owner:
(Name, ~~legal status~~, address and other information)

Case Western Reserve University
10900 Euclid Avenue
Cleveland, Ohio 44106-7228

and the Architect:
(Name, ~~legal status~~, address and other information)

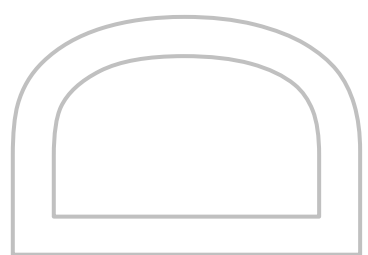
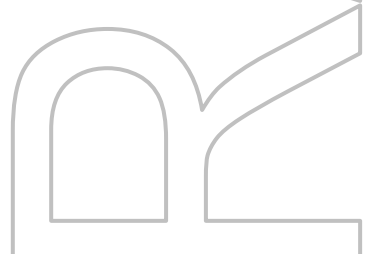
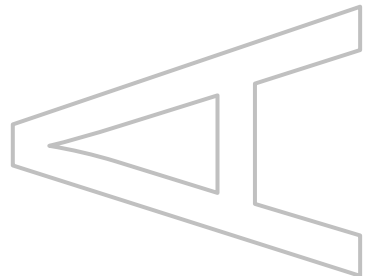
for the following Project:
(Name, location and detailed description)

CWRU Project No.:

The Owner and Architect agree as follows.



This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide ~~architectural~~ architectural, engineering and consulting services for the Project as described in this Agreement. ~~The Architect shall perform its services consistent with the professional skill and care ordinarily provided by Agreement and in Architect's proposal to Owner dated [REDACTED] attached as Exhibit A, pages 1 thru hereto and incorporated by reference herein (the "proposal").~~ Such attachment is only for the purpose of describing the scope of services and no other terms or conditions of such proposal are incorporated by such reference. In the event of any conflict between this Agreement and the Proposal, the terms of this Agreement shall govern. Architect shall perform its services with a standard of care consistent with that of other architects practicing in the same or similar locality under the same or ~~similar circumstances.~~ similar circumstances for similar projects. The Architect and the Architect's consultants shall follow the Owner's Facilities Standards, as the same may be amended from time to time. Any deviations from such standards must be approved in writing in advance by the Owner's Designated Representative. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project. ~~The Architect's services~~ Project in addition to those set forth in the Proposal. The Architect's Services include the following consulting services, if any:

1. Civil engineering
2. Geotechnical surveys and reports
3. Structural engineering
4. Mechanical engineering, including plumbing
5. Electrical engineering
6. Fire suppression

Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgement with respect to this Project.

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. The Architect shall design the project to reflect and meet the requirements of Title III of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., and all applicable regulations, guidelines, and standards promulgated thereunder in effect on the date of this Agreement, insofar as such requirements relate to the architectural design of the Project. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its ~~services~~ Services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining bids or proposals, and in awarding contracts for construction.

During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™ 2017, Standard Short Form of Agreement Between Owner and A201-2017 as modified by Owner and attached as Exhibit B and incorporated herein by reference. Unless otherwise agreed in writing, the Architect's Services during construction include interpreting the Contract Documents, reviewing and taking appropriate action on the Contractor's submittals within seven (7) business days of Architects receipt of same, visiting the site (as set forth in Proposal), reviewing and certifying requests for payments, rejecting work that does not conform to the Contract Documents (as defined in the AIA A201-2017 as modified by the Owner and attached as Exhibit B and incorporated herein by reference.) and promptly interpreting and deciding matters concerning performance under, and requirements of the Contract Documents on written request from either the Owner or Contractor. If the Owner and Contractor modify AIA Document A105 2017, A201-2017, those modifications shall not affect the Architect's ~~services~~ Services under this Agreement, unless the Owner and Architect amend this Agreement.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide ~~full~~ all known information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's

information. The Owner shall furnish consulting services not provided by the Architect, Architect pursuant to Article 1, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. ~~services upon written request of the Architect.~~ The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information. ~~Work.~~

ARTICLE 3 USE OF DOCUMENTS

~~Drawings, specifications and other documents prepared by the Architect are the Architect's Instruments of Service, and are for the Owner's use solely with respect to constructing the Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.~~ **§3.1** The Architect hereby assigns to the Owner all of the Architect's right, title and interest in and to the plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by the Architect, including any and all electronic versions of the foregoing (collectively, the "Instruments of Service"), and all such Instruments of Service shall be the exclusive property of the Owner, including, without limitation, the right to use same or any part of them on any other project of the Owners' without additional compensation to the Architect. The Architect shall cause each of its consultants to execute any separate instrument necessary to effect such assignments completely. Without limiting the generality of the foregoing, the parties acknowledge and agree that the Instruments of Service include the Schematic Design Documents, the Design Development Documents and the Construction Documents. The Architect shall maintain file copies of those documents, drawings, and/or other products as required by law or the standards of professional practice. In the case of future reuse of the Instrument of Service by the Owner, the Architect's name and seal shall be removed, and except as otherwise set forth in the Contract Documents, the Architect shall not be liable to the Owner, or third parties in connection with their reuse.

§3.2 The Owner hereby grants to the Architect a royalty-free, non-exclusive, worldwide license to use standards, conventions, and details of the design in the Construction Documents, provided that use of the standards, conventions, and details in any other single project shall not in aggregate result in the use of the entire design in the Construction Documents or a major part of the design in the Construction Documents. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

§3.3 The Architect shall provide electronic documents per the Case Western Reserve Standard Auto CAD Documentation attached as Exhibit C, dated January 2014, pages 1 thru 9.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for ~~services~~ Services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate ~~services~~ services upon no less than seven days' written notice but only if Owner's failure to make payments is not cured within such seven day period. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement. ~~Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.~~ Agreement but only if said failure to perform is not cured within such seven day period.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2017, ~~Standard Short Form of Agreement Between Owner~~

and Contractor A201-2017 as modified by Owner and attached as Exhibit B and incorporated herein by reference. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

BASIC SERVICES:

Schematic Design
Design Development
Construction Documents
Bidding
Construction Administration

TOTAL BASIC SERVICES	\$ _____
PLUS REIMBURSABLES NOT TO EXCEED	\$ _____
TOTAL CONTRACT AMOUNT:	\$ _____

The Owner shall pay the Architect an initial payment of zero (\$ 0) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for usual and reasonable expenses actually and necessarily incurred in the interest of the Project, plus percent (%) Project.

Reimbursable expenses shall be reasonable and standard rates for expenses. The Owner will not pay for premium travel, lodging, or meals. For example, lowest available or coach fare not first class, cab fare not limousine, lodging base room rate not-to-exceed \$199/night. Expenses shall be for employees of the Architect only when engaged in work directly associated with the project. Reimbursable Expenses must comply with the guidelines contained in this Agreement to be eligible for reimbursement by Owner.

Reimbursable Guidelines	Sample Charges
Category	Sample Charges
Communications – Postage/Delivery	USPS, FedEx, Courier Service
Communications – Telephone	long-distance charges
Consultant Fees	Consultants' fees and reimbursables (travel expenses, copies, etc.)
In-house Reproduction & Printing	Xerox copies, in-house drawing copies
Travel & Lodging	airfare, hotel, taxis, rental cars, parking, mileage (Travel Agent fees excluded)
Vendor Reproduction & Printing	ARC/eBlueprints, copy services

PLEASE NOTE: Reimbursable mileage shall be expensed in accordance with the current IRS Standard Business Mileage Rate.

Reimbursable Meals shall not include alcoholic beverages.

Reimbursement for meals shall be expensed in accordance the current USGSA per diem rate for Cleveland, Cuyahoga County, Ohio. All original detailed **itemized** receipts must be included.

Case Western Reserve University does not pay for additional mark-ups on services including professional consultants. Charges listed on the invoice should match precisely with supporting documentation.

Supporting documentation, including all original detailed **itemized** receipts for all reimbursable costs is required for reimbursement.

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid (Invoices are due on the first day of the month. Payments are due and payable forty-five (45) days from the date of the Architect's monthly invoice in proper format with all required backup and information. Amounts unpaid forty-five (45) days after the invoice date shall bear interest from the date payment is due at the rate of percent (%) , or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect. five percent (5 %) per annum.

Each request for payment shall comply with the following:

- .1 invoices shall be in a format agreed to by the Owner;
- .2 every invoice shall contain the Owner's Purchase Order number; and
- .3 fee for services rendered and reimbursable expenses shall be invoiced within 90 days of being incurred.

The Owner shall have no obligation to pay fees for services rendered or reimbursable expenses invoiced past 90 days from the date of close of the month in which the services were performed. All original detailed **itemized** receipts must be provided as back-up documentation.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond () months of the date of this Agreement through no fault of the Architect. Such services and compensation shall be mutually agreed to in writing in a AIA G802-2017 prior to the Architect performing such services.

ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

7.1 Insurance. The Architect shall carry and maintain at its own cost, with such companies as are reasonably acceptable to the Owner, with an A.M. Best rating of "A-, VII" or better, all liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement (of such longer period as may be required below), for damages caused or contributed to by the Architect, and insuring the Architect against claims which may arise out of or result from the Architect's Services hereunder:

- a) Workers' compensation and employer's liability insurance to the full extent as required by applicable laws;
- b) Employer's Liability or Ohio Stop Gap coverage in an amount of not less than \$500,000;
- c) Comprehensive general liability coverage, including contractual liability and public liability coverage, and naming the Owner, and other parties reasonably requested by Owner, as additional named insured as per the ISO 20 10 endorsement. 11/85 version, or such an endorsement providing the same or equal coverage for ongoing and completed operations, in not less than the following amounts:
 - (i) Bodily Injury: \$1,000,000 each person and \$1,000,000 aggregate; and
 - (ii) Property Damage: \$1,000,000 each occurrence and \$1,000,000 aggregate.
- d) Umbrella excess liability in the amount of not less than \$1,000,000; and
- e) Comprehensive automobile liability insurance covering owned, non-owned and leased vehicles with limits of:
 - (i) Bodily Injury: \$1,000,000 each person and \$1,000,000 each occurrence; and
 - (ii) Property Damage: \$1,000,000 each occurrence.

The Architect shall also purchase and maintain insurance to protect the Architect from claims arising out of the performance of the Architect's professional services caused by any negligence, errors, omissions, or acts for which the Architect is legally liable. Such Professional Liability Insurance shall have minimum limits of \$1,000,000 for each claim and \$2,000,000 annual aggregate, and shall have a deductible not in excess of \$25,000. The Architect shall keep such insurance in effect for at least five years after completion of the Services, provided that such coverage is reasonably available in the marketplace at commercially affordable premiums. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date that is no later than the date of this Agreement and shall include a supplemental extended reporting period provision.

The Architect shall provide the Owner with certificates of insurance, and if requested by the Owner, certified copies of the policies of insurance and evidencing the coverages and amounts set forth in this section. The certificates of insurance shall contain a provision that the coverage afforded under each such policy will not be canceled without thirty (30) day's prior written notice (hand delivered or certified mail) to the Owner.

7.2 Indemnification/Limitation of Liability. In addition to any liability or obligation of the Architect to the Owner that may exist under any other provision of this Agreement or by statute or otherwise, the Architect shall be liable to and will hold harmless, indemnify and defend the Owner from and against any and all damages, costs, claims (including attorney's fees) or liabilities which the Owner may sustain as a result of:

- a. any infringement of any copyright, patent or other property right resulting from the use or adoption of any designs, plans, drawings or specifications furnished by the Architect;
- b. any negligent or wrongful act of the Architect, its agents, servants, employees, officers or contractors; or
- c. any claim made by employees of the Architect.

ARTICLE 8 SCOPE OF THE AGREEMENT

8.1 This Agreement, and the documents incorporated by reference below and herein, represent the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. Architect shall comply with the terms and conditions of this Agreement, including all relevant Exhibits, and require Architect's consultants to comply as well.

8.2 This agreement is comprised of the following documents listed below, each of which is incorporated by reference herein:

- .1 AIA B105-2017 Standard Short Form of Agreement Between Owner and Architect, as modified herein
- .2 AIA G802-2017 Amendment to the Professional Services Agreement
- .3 Exhibit 'A' Proposal dated [redacted] pages 1 thru [redacted]
- .4 Exhibit 'B' – AIA Document A201-2017 as modified by Owner, pages 1 thru 54
- .5 Exhibit 'C' – CWRU Standards AutoCAD Documentation dated January 2014, pages 1 thru 9
- .6 Exhibit 'D' – CWRU Tobacco-Free Policy dated July 1, 2017, page 1 of 1

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Peter M. Poulos, Vice President & General Counsel
Office of General Counsel

(Printed name and title)

ARCHITECT (Signature)

[redacted]
(Printed name, title, and license number, if required)

And

John F. Sideras, Executive Vice President & CFO
Office of Finance